

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MALIK ALI MUHAMMAD,	)	No. C 09-4140 JSW (PR)
	)	
Petitioner,	)	
	)	<b>ORDER TO SHOW CAUSE</b>
vs.	)	
	)	(Docket No. 3)
MATTHEW M. MARTEL, Warden,	)	
	)	
Respondent.	)	
	)	
	)	

**INTRODUCTION**

Petitioner, a prisoner of the State of California, has filed a habeas corpus petition pursuant to 28 U.S.C. § 2254 challenging the constitutional validity of his state court conviction. Petitioner has filed a motion to proceed *in forma pauperis* which is now GRANTED (docket no. 3). This order directs Respondent to show cause why the petition should not be granted.

**BACKGROUND**

According to the petition, Petitioner was convicted after a jury trial in Marin County Superior Court of stalking with a prior and criminal contempt. He was sentenced to 10 years in state prison. Petitioner's appeal to the California Court of Appeal and his petition for review in the California Supreme Court were denied in 2007 and 2008 respectively. Petitioner subsequently sought collateral relief in the state courts. Petitioner filed the instant federal habeas petition in this Court on June 14, 2009.

## DISCUSSION

### I Standard of Review

This court may entertain a petition for a writ of habeas corpus “in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a).

It shall “award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.” *Id.* § 2243.

### II Legal Claims

Petitioner raises the following federal ground for relief in the petition: 1) the trial court committed judicial misconduct; 2) the trial court’s jury instruction violated Petitioner’s rights to due process and a fair trial; 3) Petitioner’s sentence violated his right to trial by jury; 4) insufficient evidence supports Petitioner’s conviction; 5) Petitioner’s conviction violates his rights under the First Amendment; 6) prosecutorial misconduct; 7) admission of evidence against Petitioner regarding his religious beliefs violated his constitutional rights; 8) Petitioner’s sentence was disproportionate under the Eighth Amendment; 9) ineffective assistance of trial counsel; and 10) ineffective assistance of appellate counsel. Liberally construed, it does not appear from the face of the petition that Petitioner is not entitled to relief on the other claims set forth above. Accordingly, Respondent is ordered to respond to the petition as set forth below.

## CONCLUSION

For the foregoing reasons and for good cause shown,

1. The Clerk shall serve by certified mail a copy of this order and the petition, and all attachments thereto, on Respondent and Respondent's attorney, the Attorney General of the State of California. The Clerk also shall serve a copy of this order on Petitioner.

2. Respondent shall file with the Court and serve on Petitioner, within **sixty (60)**

1 days of the issuance of this order, an answer conforming in all respects to Rule 5 of the  
2 Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should  
3 not be granted. Respondent shall file with the answer and serve on Petitioner a copy of all  
4 portions of the state trial record that have been transcribed previously and that are relevant  
5 to a determination of the issues presented by the petition. If Petitioner wishes to respond  
6 to the answer, he shall do so by filing a traverse with the Court and serving it on  
7 Respondent within **thirty (30)** days of the date the answer is filed.


8 3. Respondent may file a motion to dismiss on procedural grounds in lieu of an  
9 answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules Governing  
10 Section 2254 Cases. If Respondent files such a motion, Petitioner shall file with the Court  
11 and serve on Respondent an opposition or statement of non-opposition within **thirty (30)**  
12 days of the date the motion is filed, and Respondent shall file with the Court and serve on  
13 Petitioner a reply within **fifteen (15)** days the date the opposition is filed.

14 4. It is Petitioner's responsibility to prosecute this case. Petitioner must keep  
15 the Court informed of any change of address by filing a separate paper captioned "Notice  
16 of Change of Address." He must comply with the Court's orders in a timely fashion.  
17 Failure to do so may result in the dismissal of this action for failure to prosecute pursuant  
18 to Federal Rule of Civil Procedure 41(b).

19 This order terminates Docket No. 3.

20 IT IS SO ORDERED.

21 DATED: April 16, 2010

22   
23 JEFFREY S. WHITE  
24 United States District Judge  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

MALIK ALI MUHAMMAD,  
Plaintiff,

Case Number: CV09-04140 JSW

**CERTIFICATE OF SERVICE**

v.

MATTHEW M MARTEL et al,  
Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on April 16, 2010, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Malik Ali Muhammad V-37398  
California Rehabilitation Center CSP  
P.O. Box 3535: 402-27 Low  
Norco, CA 92860

Dated: April 16, 2010



Richard W. Wieking, Clerk  
By: Jennifer Ottolini, Deputy Clerk